In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1731

THOMAS CALLAHAN AND THOMAS KAPATOS,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioners were convicted of conspiracy to rob a bank money truck in violation of 18 U.S.C. 2113 (18 U.S.C. 371) and of transportation of a stolen motor vehicle in interstate commerce in violation of 18 U.S.C. 2312. The court of appeals affirmed (Pet. App.).

Petitioners contend, as they did below, that certain identification procedures employed were invalid; that evidence used at trial was obtained illegally from petitioner Callahan and that he was not sufficiently connected by proof with the theft of an automobile used in the conspiracy; and that the indictment should have been dismissed because none of the witnesses who testified at trial were called before the grand jury. These contentions are fully answered in the opinion of the court of appeals, on which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1971.

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